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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/810,526
Filing Date: March 27, 2004
Appellant(s): ORBACH, JULIAN JAMES

John C. Moran
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/05/2009 appealing from the Office action mailed 12/02/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0198461 A1	Coombes, Daniel J.	09-2002
2002/01427656 A1	Rutledge et al.	04-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 12-15, 34-37, 56 and 60 are rejected under 35 U.S.C. 102(e) as being anticipated by Coombes (US 2004/0198461 A1).

Consider **claims 12, 34, 56 and 60**. Coombes teaches a method for alerting a calling party of a delay before an incoming call will be answered by a user of a called wireless handset, comprising the steps of:

answering the incoming call by the wireless handset in response to a predefined amount of movement in a physical location of the wireless handset as detected by the wireless handset when the telecommunication terminal is not engaged in another call with the predefined amount of movement occurring after the incoming call is received by the wireless handset (Paragraphs [0008], [0011-0012], [0016], Fig.2 show and teach after the mobile handset receiving/detected an incoming call and answering the incoming call when the users is at location that inconvenient to answer);

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muting an audio path of the answered call from communication with the user (Paragraph [0016], lines 4-5 teach put call on hold); and

transmitting a message that is selected by the user to the calling party. (Abstract, Paragraph [0011-0012] teaches transmitting a pre-recording message to the caller that the user selects to be answer).

Consider **claims 13 and 35**. Coombes teaches the method of claim 12, further comprises the step of maintaining the incoming call from the calling party with the audio path muted to the user; and allowing audio communication by the user with calling party in response to another input from the user (Paragraph [0012], [0016] teach put incoming call on hold and selecting pre recording message that communicated with calling party by the users).

Consider **claims 14 and 36**. Coombes teaches the method of claim 12 further comprises the step of terminating the incoming call after transmission of the message (Paragraph [0015], Fig.3 shows step 314 teach end call when after transmit message).

Consider **claims 15 and 37**. Coombes teaches the method of claim 12 wherein the message is an audio message and the audio message is transmitted via the audio path to the calling party (Paragraph [0011-0012] teach audio message record and transmitted).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-18, 20, 22, 38-40, 42 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coombes (US 2004/0198461 A1) in view of Rutledge et al. (US 2002/0142756 A1).

Consider **claims 16, 20, 38 and 42**. Coombes teaches the claimed limitation as discussed in claim 15 **but is silent on** comprises the steps of receiving a time specifying the delay; and inserting the time into a predefined message.

In an analogous art, **Rutledge teaches** comprises the steps of receiving a time specifying the delay; and inserting the time into a predefined message (Paragraph [0012] teach the caller receiving specific time that inserting the time into a predefined message).

Therefore, it would have been obvious at the time that the invention was made to modify Coombes with Rutledge's system, such that the steps of receiving a time specifying the delay; and inserting the time into a predefined message to provide means ensure the caller that the incoming call is received and welcome with the awareness of how long will be on hold.

Consider **claims 17, 39**. The combination of Coombes and Rutledge teach the method of claim 16. Further, Rutledge teaches wherein the step of inserting comprises converting the time to audio information for insertion into the predefined message (Paragraphs [0025]).

Consider **claims 18, 40**. The combination of Coombes and Rutledge teach the method of claim 17. Further, Coombes teaches comprises the step of recording the predefined message (Paragraph [0011] teach recording message).

Consider **claims 22, 44**. Coombes teaches the method of claim 20 further comprises the step of entering the predefined message (Paragraph [0011]).

Claims 19, 21, 41, 43 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coombes (Pub. No. 2004/0198461) in view of Rutledge et al. (US 2002/0142756 A1) and further view of well know prior art (Official Notice).

Consider **claims 19, 21, 41, 43, 57**. The combination of Coombes and Rutledge teach the method of claim 12. However, Coombes and Rutledge are silent on wherein the message is a text message and transmit via text message link.

The examiner take Official notice that “the messages is a text message and transmit via text message link” is well known in the art that users of wireless handset can send message by text).

Therefore, it would have been obvious at the time that the invention was made to modify such that the messages is a text message and transmit via text message link to provide means for the convenient and allow the caller reading the reply text message.

(10) Response to Argument

Claims 12-15 and 60 stand rejected under 35 U.S.C 102 (e).

Appellant's argue that " Coombes does not answer an incoming call in response to a predefined amount in a physical location as detected by the wireless handset or even in response to detection by the wireless handset of the presence of the wireless handset in a particular physical location".

The examiner's respectfully disagrees.

1). Coombes clearly teaches answering the incoming call by putting the incoming call on hold until the user is able to answer wherein the user is receiving the incoming call at the location that is inconvenient or inappropriate to answer the incoming call such as meeting/church place.

Paragraph [0008] teach receiving incoming call and put call on hold until the user can answer

Paragraph [0008] The invention solves the problem of **receiving incoming calls at a mobile communication device at an inconvenient time** by providing a means for **selectively** and automatically **answering the incoming call**. The mobile communication device will receive the incoming call signal in accordance with present practice, but the mobile communication device allows the user to either take the call, or upon receiving an affirmative indication from the user, automatically answer the call and transmit a pre-recorded greeting message, then **hold the call until the user is able to speak with the caller**. The pre-recorded greeting message may be a standard, default message, or a message recorded by the user specifically for an anticipated calling party.

Paragraph [0011] teach how long the caller have to wait which read on the amount of movement accruing after the incoming call is received

[0011] According to the invention, a pre-recorded greeting message (PRGM) 130 is provided in digital form in the memory 104. The PRGM is a voice message similar to that used on telephone answering machines. It may be provided by the manufacturer of the mobile communication device at the time of manufacture, or in a preferred embodiment, it is recorded by the user or owner of the mobile communication device. An example of a PRGM would be "**please hold, I will speak with you in a moment,**" or some other appropriate phrase.

Paragraph [0012] further teach and clarify how to answer the incoming call.

Paragraph [0012] Referring now to FIG. 2, there is shown a flow chart diagram 200 of a method for automatically answering an incoming call, in accordance with the invention. At the start 202 of the process, the step of providing a PRGM in the mobile communication device has been performed, either at the time of manufacture, or subsequently. The PRGM is stored in the communication system, for example in the mobile communication device or perhaps equally effective in the communication system infrastructure. In the preferred embodiment, the PRGM is in the memory of the mobile communication device, and in a compressed form. Compression can be achieved by storing the PRGM in an encoded form such as is achieved using vector sum excited linear predictive (VSELP) encoding techniques. Compression greatly reduces the memory space required to store the PRGM. Furthermore, it is assumed that the mobile communication device is powered on and registered for service. Some time thereafter, another party wishes to call the user of the mobile communication device. Accordingly, the base station sends an incoming call signal, and the mobile communication device performs the step of receiving the incoming call signal (204) from the base station. In response to receiving the incoming call signal, the mobile communication device then performs the step of activating a call alert means (206) of the mobile communication device. The call alert means may be any one of several conventional means, such as playing an audio signal over the speaker, or energizing a vibration device for so-called "silent ringing", for example. Once the call alert means has been activated, the user has the option of auto-answering the call, or answering it normally. The mobile communication device has been provided with a means for selecting the auto-answer feature option on the mobile communication device. The means for selecting may be, for example, a button provided specifically for enabling the auto-answer feature, but preferably, upon **receiving the incoming call** signal, the mobile communication device displays a message to the user offering the option. The user then presses one of two soft keys to select the desired operation and proceed. A soft key is a button provided on the mobile communication device in

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close proximity to a portion of the display where various messages can be shown, indicating that if the user presses the button at that time, a specific function or action is taken by the mobile communication device. The function activated by the soft key therefore changes depending on the state of the mobile communication device. The option to **auto-answer the incoming call is activated (208) by the user**. According to the invention, once the call alert is activated, the user selects (210) the auto-answer feature by, for example, pressing the designated button or soft key. In response to a user selecting the auto-answer feature option, **the mobile communication device answers the incoming call as it would normally do, but does not transmit audio signals received at the microphone of the mobile communication device. Instead, the mobile communication device transmits (212) the pre-recorded greeting message to the calling party, and holds the call (214)**. That is, the mobile communication device **puts the calling party on hold, and maintains the call** in an "in progress" state. However, the mobile communication device does not transmit any audio signal from the microphone, and preferably doesn't activate the speaker or earpiece while the call is on hold. **At some point thereafter, the user may then resume the call by**, for example, pressing a button, indicating that the **user now desires to commence with the call that is on hold**. **The mobile communication device then activates the microphone and speaker, and the call commences normally**.

Paragraph [0016] teaches answering the incoming call at a **location** that is inconvenient or inappropriate to answer the call such as meeting place.

Examiner asserts that the claim does not empirically define what or where the "location" should be. Therefore, it is open to interpretation as an incontinent location (e.g., church, meeting, etc.).

Paragraph [0016] Thus, the invention provides for a means and apparatus for auto-answering an incoming call at a mobile communication device. This **allows the user of the mobile communication device to auto-answer calls and put them on hold briefly until the user can attend to the call**. This will be of benefit, for example, **when the user is speaking at a meeting** and cannot simply stop to answer a call, but does wish to speak to the calling party.

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Claim 56 stand rejected under 35 U.S.C 102 (e)

Appellant's argument is that "Coombes can not disclose an apparatus for the detection of movement after detection of an incoming call and transmission of a message upon detection of the incoming call and movement as is recited in claim 56".

The examiner respectfully disagrees, claim 56 recites similar limitations as in claim 12 and as such the response set forth above for claim 12 applies to appellant's argument with respect to claim 56.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees:

/Kiet Doan/

Examiner, Art Unit 2617

/VINCENT P. HARPER/

Supervisory Patent Examiner, Art Unit 2617

/Charles N. Appiah/

Supervisory Patent Examiner, Art Unit 2617